specifically identifiable chattel as property of the bankrupt which became vested in the Official Assignee.

Assuming the facts alleged or suggested by the Official Assignee to be correct, it is argued by Mr. Braddell that the Official Assignee waived the tort which may have been committed under S. 51 because he claims the money as money received by Ganga Singh for the use of the Official Assignee, *Smith v. Baker*[8] and that the first prayer in the motion recognizes the validity of the judgment. Such a claim is based on an imputed promise or a *quasi* contract between Ganga Singh and the Official Assignee, *Sinclair v. Brougham & Anor.*[7] and if this is so it is hard to see how the Official Assignee's claim arises in the bankruptcy of Mohan Singh.

Mr. Braddell relied mainly on *Ex parte Dickin, In re Pollard*[2] a case which considerably restricts the apparent generality of S. 72 of the Act of 1869 and of S. 89 s.s. 1 of the Colony Ordinance. That case decided that even if the Court in bankruptcy had jurisdiction over a mere common money demand from a person who is a stranger to the bankruptcy that jurisdiction should not be exercised but the trustee should bring an action for the debt.

I doubt whether it is correct to say that the Court in bankruptcy has no jurisdiction and *Ex parte Dickin, In re Pollard*[2] did so decide. If a person with a claim against property of the bankrupt can submit the determination of his rights to the Court (*Ex parte Fletcher, In re Hart*[4]) it is not obvious why the Court should not have jurisdiction to entertain a converse submission.

But jurisdiction or no jurisdiction they have leaned strongly against deciding the liability of a stranger to a bankruptcy in bankruptcy proceedings.

In *Ellis v. Silber*[3] Lord Selborne said:—

> "That which is to be done in bankruptcy is the administration in bankruptcy. The debtor and the creditors, as the parties to the administration in bankruptcy, are subject to that jurisdiction. The trustees or assignees, as the persons instrusted with that administration, are subject to that jurisdiction. The assets which come to their hands and the mode of administering them are subject to that jurisdiction; and there may be, and I believe are, some special classes of transactions which, under special clauses of the Acts of Parliament, may be specially dealt with as regards third parties. But the general proposition, that whenever the assignees or trustees in bankruptcy or the trustees under such deeds as these have a demand at law or in equity as against a stranger to the bankruptcy, then that demand is to be prosecuted in the Court of Bankruptcy, appears to me to be a proposition entirely without the warrant of anything in the Acts of Parliament, and wholly unsupported by any trace or vestige whatever of authority."

In *Ex parte Musgrave, In re Wood*[6] James, L.J. said:—

> "A man who is merely said to be a debtor to the estate of a bankrupt cannot be brought compulsorily into a Court of Bankruptcy."

Mr. Edwardes-Ker referred me to *Ex parte Brown, In re Yates*[1] a case applicable to the order made by this Court in the present bankruptcy on the 5th May. But the issues in the present case are more complicated. One issue is what were the true circumstances under which Ganga Singh took the promissory note executed by Lee Siong Kiat who was not the bankrupt. It begs the question to say that the Official Assignee has a higher and better title than the bankrupt.

I do not decide that I have no jurisdiction but I think the issues in dispute can be more conveniently dealt with in an action. In *In re Horder*[5] Clauson, J. thought the respondents not to be unreasonable in taking up the attitude that the ordinary procedure should be taken and he gave an opportunity to the trustee to bring an action to raise the issue which he sought to have tried on the motion. I think that the best course to adopt here and I shall make an order similar to that made by Clauson, J., namely, that the motion stand over generally, that if an action is started by the Official Assignee within one month, the motion shall not be restored until the action has been dealt with or disposed of. Costs of this motion reserved. If at the end of one month from this date an action has not been commenced either party may apply. If an action is so commenced such application shall not be made until the determination of the action.

Motion stayed.

[ORIGINAL CIVIL JURISDICTION]

PEDLOW, J.

September 19, 1940.

J.M. ABDUL KADER

v.

SHAW BROTHERS LTD.

[SINGAPORE SUIT No. 139 of 1940]

Tenancy of premises—Specific performance—Monthly letting—Damages—Frustration of contract.

The Court will not decree specific performance of an agreement for a monthly tenancy. If such an agreement is frustrated or rendered impossible of performance by reason of the coming into force of the Rent Restriction Ordinance no damages will be recoverable by either party in respect of the period of such frustration.

Cases referred to:—

(1) *Clayton v. Illingworth*, 122 E.R. 1003.

(2) *Glasse v. Woolgar,* 41 S.J.R. 573.

(3) *Lavery v. Pursell,* 39 Ch. Div. 508.

(4) *Manchester Brewery Co. v. Coombs,* (1901), 2 Ch. 608.

TRIAL OF ACTION.

A. L. Barrett for the plaintiff.

John Laycock for the defendants.

The plaintiff in this action claimed that the defendants had agreed with him to give him a monthly tenancy of certain stalls at the Theatre Royal, Singapore. The defendants admitted an agreement for a monthly tenancy but stated that that agreement applied to other stalls not to the stalls which the plaintiff now asked to be given possession of. One of the stalls which the plaintiff wanted was a cigarette stall which at the time of the agreement, namely the 8th September 1939, was in the possession of another tenant. Notice to quit was given to that other tenant but after service of the notice to quit the Rent Restriction Ordinance came into force and the tenant relying on the protection given by that Ordinance refused to quit. Proceedings were taken against him before the Rent Assessment Board and the Rent Assessment Board made an order giving the landlord, the defendants, authority to take proceedings to eject the tenant. The tenant eventually went out in the month of March 1940. The plaintiff claimed that he should have been given possession on the 15th September 1939 and he asked for specific performance of the agreement for a monthly tenancy and also for damages.

Barrett for the Plaintiff dealing with the question of frustration of the contract by reason of the provisions of the Rent Restriction Ordinance contended that such a plea failed as the defendants had got the old tenant out in March 1940 and had not even then given possession to the Plaintiff.

John Laycock for the Defendants. In England it has been held in many cases that specific performance will not be granted of an yearly tenancy or of a tenancy for a year—*Lavery v. Pursell*[3], *Clayton v. Illingworth*[1], and *Glasse v. Woolgar*[2]. But specific performance is a discretionary remedy and there have been cases where an agreement for a yearly tenancy has been ordered to be specifically performed, such as the case of *Manchester Brewery Co. v. Coombs*[4] a case in which the plaintiff would have been left entirely without remedy if the Court had not ordered specific performance. If in England specific performance will not be decreed of a yearly tenancy then a fortiori the Court will not decree specific performance of a mere agreement for a monthly tenancy. The plaintiff cannot shew any precedent for such a decree. With regard to the question of damages claimed by the plaintiff for the period during which the old tenant was in possession, the contract to give possession to the plaintiff was clearly frustrated by the operation of the Rent Restriction Ordinance. Owing to that ordinance the previous tenant could not be evicted until March 1940. The doctrine of frustration applies and no damages can possibly be payable in respect of the period of frustration. All the damages claimed by the plaintiff are really applicable only to the period of frustration, i.e. prior to March 1940.

Barrett in reply. I do not dispute the authorities cited by Mr. Laycock on the question of specific performance but I point out that if the defendants had given possession to the plaintiff in September 1939 he would have been by reason of the Rent Restriction Ordinance entitled to remain in possession for the whole period of the war and perhaps even longer.

An oral judgment was delivered by Pedlow J. who after dealing with the facts continued.

Pedlow J. I do not suppose that this matter is going to appeal, but if it does I would say that I accept the view of both counsel that specific performance of a month to month contract is not one which the Court should award, and that, as the Rent Restriction Ordinance came into force on the 30th of October and was given retrospective effect to the 1st of August, it seems to me that if there ever was a contract for the letting of the cigarette stall which is now a showcase, that contract was thereby frustrated as the previous tenant refused to give up possession.

Claim dismissed.

Barrett & Co. solicitors for the plaintiff.

Braddell Brothers solicitors for the defendants.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.